IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WP(C).No. 15531 of 2005(Y)

AGAINST THE ORDER IN EP 80/ 2004 IN OS.364/1996 of II ADDL.SUB COURT,THRISSUR

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PETITIONER:

MARIYAMMA,
W/O.KUNNATH PEEDIKAYIL ABDUTTI HAJI,
OTTUPARA DESOM, KUMARANELLUR VILLAGE,
THALAPPILLY TALUK, REP. BY POWER OF ATTORNEY HOLDER ABDUL RAHMAN, S/O.MARIYAMMA.

BY ADV. SRI.K.N.PADMAKUMAR

RESPONDENTS:

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1. **NABEESAKUTTY, D/O.ARANGATHPARAMBIL HAMZA,**
   OTTUPARA DESOM, KUMARANELLUR VILLAGE,
   THALAPPILLY TALUK, THRISUR DISTRICT.

2. **ABDUTTI HAJI,**
   S/O.KUNNATH PEEDIKAYIL AHAMMED,
   OTTUPARA DESOM, KUMARANELLUR VILLAGE,
   THALAPPILLY TALUK, THRISSUR DISTRICT.

BY ADV. SMT.PREETHY KARUNAKARAN)
SRI.R.RAJESH KORMATH) for R1
SMT.MEENA.A.
SMT.M.R.MINI
SRI.V.S.ROBIN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.15531/2005 Y

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE E.A.NO.215/05 IN E.P.NO.80/2004 IN O.S.NO.364/1996 ON THE FILE OF SUB COURT, THRISSUR.**

EXT.P2: **COPY OF THE E.A.NO.216/05 IN E.P.NO.80/2004 IN O.S.NO.364/1996 ON THE FILE OF SUB COURT, THRISSUR.**

EXT.P3: **COPY OF THE ORDER DTD. 21/02/05 IN E.A.NO.215/05 IN E.P.NO. 80/2004 IN O.S.NO.364/1996 ON THE FILE OF SUB COURT, THRISSUR.**

EXT.P4: **COPY OF THE ORDER DTD. 21/02/05 IN E.A.NO.216/05 IN E.P.NO.80/2004 IN O.S.NO.364/1996 ON THE FILE OF SUB COURT, THRISSUR.**

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 15531 of 2005

Dated this the 24th day of July , 2007

JUDGMENT

Order impugned in this writ petition under Article 227 filed by the wife of the judgment debtor is Ext.P4 order passed by the Execution Court dismissing Ext.P2 application filed under Rule 97 Order 21 CPC raising obstructions in the matter of delivery of the property to the decree holder (first respondent) on the strength of a sale certificate issued by the Execution Court. Under Ext.P4 the learned Subordinate Judge has referred to the judgment of this court in FAO No.239/2003 and observed that on the terms of that judgment the order of delivery is only to be confirmed since the conditions imposed under that judgment were not complied with by the judgment debtor.

2. Sri.K.N.Padmakumar, the learned counsel for the petitioner submits that Ext.P4 is vitiated by a patent mistake. Counsel further submits that in Ext.P4 the learned Subordinate

Judge seems to think that E.A.798/2003 which was subject matter of F.A.O.239/2003 was filed by the present petitioner. The said E.A., the learned counsel submits, was filed not by the present petitioner, but by her husband – the judgment debtor. The above submission of the learned counsel is certainly correct. In E.A. No.798/2003, the petitioner was the judgment debtor only and not the present petitioner(wife of the judgment debtor). But according to me, there are other good reasons on which the ultimate decision taken by the learned Subordinate Judge under Ext.P4 can be sustained. The sale in question was conducted as far back as in 26.3.2003 and the same was confirmed on 30.8.2003. The instant application (Ext.P2) was filed by the petitioner only in February 2005. I enquired of the counsel whether the petitioner had filed any claim earlier before the property was actually sold. The learned counsel for the petitioner had no answer. But the learned counsel for the decree holder would submit that the petitioner had unsuccessfully filed a claim petition under Order 21 Rule 58. If that be the position, the maintainability of Ext.P2 application itself is very much in doubt. Even otherwise I am not impressed by the case of the petitioner

who is represented by her son as power of attorney holder that the petitioner and her husband are at logger heads. The learned counsel for the decree holder reports that delivery of the properties purchased by the decree holder has already been taken by her. In view of the above submission also, there is no warrant for invoking the supervisory jurisdiction on the impugned order. The writ petition is dismissed. No costs.

PIUS C. KURIAKOSE,
JUDGE.

Dpk.